

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

CRIMINAL No. 12-00388-JD

v.

JOSEPH VITO MASTRONARDO, JR., ET AL.

MOTION OF JOSEPH V. MASTRONARDO, JR., FOR CONTINUANCE

Joseph V. Mastronardo, Jr., by his attorney, John W. Morris, respectfully moves for a continuance of trial alleging the following in support thereof:

1. Joseph V. Mastronardo, Jr., is a Defendant in the above-captioned matter in which trial is scheduled to commence on February 3, 2014.
2. The case involves 14 Co-Defendants in a 23-Count Indictment. The Government has estimated that its case – consisting of hundreds of wiretapped conversations, over two dozen witnesses and 91 stipulations – will take three to four weeks. Defendants’ cases are estimated to take an additional week. In fact, the undersigned believes these estimates to be conservative.
3. Movant is a 63-year old male who has suffered a series of severe health problems, including:
 - a. Chronic aspiration due to laryngeal cancer and therapy for cancer;
 - b. Recurrent pneumonia due to aspiration;
 - c. Stroke (thalamic);
 - d. Severe hypertension plus orthostatic hypotension causing recurrent syncope;
 - e. Hypertrophic cardiomyopathy; and
 - f. Inability to eat or swallow.

4. As a result of these conditions, Movant must ingest food and liquid through an abdominally implanted feeding tube. Further, he requires continuous ingestion of liquids in order to maintain his blood pressure.

5. Attached hereto and marked as Exhibit A is a report dated January 6, 2014, from James Doghramji, MD, Movant's personal physician. As noted in the report, Dr. Doghramji believes that daily attendance in court proceedings would cause irregular fluid intake and physical stress which would put Movant at risk of syncopal attack and risk of recurrent stroke.

6. Attached hereto and marked as Exhibit B is a report dated January 7, 2014, from Dr. William G. Kussmaul, III, Movant's cardiologist, who believes that Movant is unable to maintain an upright sitting position for any prolonged period and that attempts to do so could provoke a syncopal attack and risk of recurrent stroke.

7. The reports of Drs. Doghramji and Kussmaul were separately obtained by counsel in requests for their individual professional opinions. Each has identified the risk of syncopal attack with a resulting risk of stroke.

8. It has been the observation of the undersigned from meetings with Movant that Mr. Mastronardo has extremely limited energy which renders him unable to maintain mental focus for over one hour. Thus, although Mr. Mastronardo appears to be mentally competent and aware of the issues in the case, even in the comforts of his home where he is able to continuously ingest liquids through his feeding apparatus, he is physically and mentally unable to remain focused as would be required for attendance and participation at trial.

9. Movant remains available for examination by a physician selected by the Government and for any independent medical examination which might be ordered by the Court.

WHEREFORE, Joseph V. Mastronardo, Jr., requests that his trial scheduled for February 3, 2014, be continued.

Respectfully submitted,


John W. Morris, Esquire
Two Commerce Square, Suite 3900
2001 Market Street
Philadelphia, PA 19103
(215) 772-2290
Jmorris@kcr-law.com

*Counsel for Defendant
Joseph V. Mastronardo, Jr.*

Date: January 13, 2014

EXHIBIT A

Mastronardo, Joseph (M) 63y (02/10/1950) **PID:** QCB4027339300
1671 Stocton Rd., Meadowbrook, PA 19046

Date of Service: 12/23/2013

Clinical Note ID#19914110

Visit with provider

Reason for Visit Orthostasis

CC: Balance problems

HPI

Balance is actually worse since doing vestibular training. He has my fallen but feels like his balance is off all the time.

CC: Cough and aspiration

HPI

Took nothing PO for a week in advance of a chest CT ordered by pulmonary. Even though he is eating very little he became very weak and lost 6 pounds. Chest CT has showed no change.

CC: Orthostasis

HPI

Not having Orthostasis problems but he is very careful about maintaining a lot of fluids.

Problems

Dysphagia 787.2

Past Medical History

Stroke

Notes: Hemorrhagic March 2013

Herpes zoster

Unspecified paralysis of vocal cords

Malignant neoplasm of oropharynx, unspecified

Notes: Base of tongue, S/P chemo & XRT 2000

Dysphagia

Surgical History

LAPS SURG ESOPG/GSTR FUNDOPLASTY

TRACHEOSTOMY PLANNED SEPARATE PROCEDURE

vocal cord fat injection

Social History

Never smoked

Family History

No Family History present

Active Allergies/Adverse Reactions

No Known Active Allergies/Adverse Reactions

Active Medications

| | |
|--|------------|
| Spectravite Senior Therapeutic Multiple Vitamins with Minerals tablet 5ml PO qd; 5 refills | 11/14/2013 |
| Feosol 220 mg/5 mL elixir 5 ml PO bid; 5 refills | 06/10/2013 |
| lactulose 10 g/15 mL syrup 30 ml PO qd; 5 refills | 05/28/2013 |
| ranitidine 150 mg tablet 1 PO qhs; 5 refills | 05/28/2013 |
| Nexium 40 mg delayed release capsule 2 PO bid; 5 refills | 05/28/2013 |
| fludrocortisone 0.1 mg tablet 1 PO qd; 5 refills | 04/19/2013 |

Review of Systems

General/Constitutional

Pt Reports: Weight loss (6 pounds when his appetite was nothing PO); Dizziness; Weakness

Pt Denies: Change in appetite; Weight gain; Fatigue

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Cardiovascular

Pt Denies: Chest pain

Respiratory

Pt Reports: Chest congestion; Cough; Phlegm

Pt Denies: Difficulty breathing; Wheezing

Gastrointestinal

Pt Denies: Abdominal pain; Nausea; Vomiting; Heartburn; Constipation; Diarrhea; Blood in the stool

Musculoskeletal

Pt Denies: Limited joint mobility; Joint pain; Muscle pain; Stiffness; Tenderness; Neck pain; Back pain

Neurological

Pt Denies: Weakness/numbness in arm; Weakness/numbness in leg; Numbness/tingling; Muscle weakness; Involuntary movements

Vitals

B/P: 110/70 Standing/Left Arm, 140/80 Sitting/Left Arm; **P:** 68 BPM Radial; **O₂ Sat:** 95 %;

Physical Exam

Constitutional: Well developed; Well nourished; Cooperative

Additional comments: Thin, looks no different

Psychiatric: Alert and oriented to person, place, and time; Recent memory intact; Remote memory intact; Mood and affect appropriate for situation; Judgment and insight normal; Normal attention span and concentration

HEENT: Head normocephalic and atraumatic; No hemorrhages or exudate

Neck: Thyroid normal; No regional lymphadenopathy; No masses; No carotid bruits

Additional comments: Hoarse voice

Cardiovascular: Heart rate and rhythm regular; Normal S1 and S2; No murmurs, rubs, gallops, or clicks; No lifts, heaves, or thrills felt on palpation; Heart location and apex normal; Carotid artery pulsations normal; No jugular vein distention; No peripheral edema

Respiratory: Respiratory effort unremarkable; Respiratory rate and pattern normal; Lungs clear to auscultation bilaterally; Percussion of chest unremarkable

Gastrointestinal: Flat; Normal bowel sounds; Abdomen soft and nontender; No palpable masses

Additional comments: PEG tube in place

Musculoskeletal: Normal inspection, palpation, stability, muscle strength, tone, and ROM for the following: Neck; Spine and ribs; Right upper extremity; Left upper extremity; Right lower extremity; Left lower extremity

Neurologic

Additional comments: No focal abnormalities

Diagnoses

Orthostatic hypotension 458.0

Orthostatic hypotension-28651003

Unspecified paralysis of vocal cords 478.30

Vocal cord palsy-302912005

Stroke 434.91

Cerebrovascular accident-230690007

Respiratory conditions due to unspecified external agent 508.9

Aspiration into respiratory tract-413585005

Abnormality of gait 781.2

Abnormal gait-22325002

Dysphagia, unspecified 787.20

Dysphagia-40739000

Malignant neoplasm of oropharynx, unspecified 146.9

Malignant tumor of oropharynx-363392002

Mastronardo, Joseph (M) 63y (02/10/1950) **PID:** QCB4027339300
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Plan

BP drops 30 mm HG but he has no symptoms. He is aggressively keeping himself hydrated, even small drops in fluid intake can cause precipitous drops in BP and subsequent syncope. For this reason I have determined that he is medically unstable to attend daily court proceedings, it would result in severe drops in BP and the stress of the situation would put him at high risk for another stroke. Recent labs normal, anemia resolved for now, constipation not an issue. Continue chest PT for aspiration. Ba;acne problems appear to be central related to previous stroke and not peripheral or vestibular.

Finalized and Signed at 21:51:21 on 12/26/2013 by Doghramji, James MD

EXHIBIT B



William G. Kussmaul III, MD, FACC, FACP, FSCAI
Clinical and Invasive Cardiology
Director, Interventional Cardiology

Sahil S. Banka, MD, FACC
Clinical and Invasive Cardiology

January 7, 2014

John W. Morris
Two Commerce Square, Suite 3900
2001 Market Street
Philadelphia, PA 19103

RE: Joseph Mastronardo Jr., d.o.b. 02/10/1950

Dear Mr. Morris:

As requested by the patient, I am writing to comment on Mr. Mastronardo's state of health with particular reference to an upcoming court proceeding.

In brief, his diagnoses include:

- Chronic aspiration due to laryngeal cancer and therapy for cancer
- Recurrent pneumonia due to aspiration
- Stroke (thalamic)
- Severe hypertension plus orthostatic hypotension causing recurrent syncope
- Hypertrophic cardiomyopathy
- Inability to eat or swallow

The totality of these problems renders Mr. Mastronardo quite frail. He has limited energy and would be unlikely to be able to sustain an upright (even sitting) position for any prolonged period of time. Attempting to do so might provoke a syncopal attack, which with his labile blood pressure would expose him to the risk of a recurrent stroke.

I therefore recommend against his participation in a court proceeding.

Sincerely,

William G. Kussmaul III, MD

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CERTIFICATE OF SERVICE

I, John W. Morris, Esquire, hereby certify that the foregoing **Motion of Joseph V. Mastronardo, Jr., for Continuance** was filed electronically on January 13, 2014, and is available for viewing and downloading from the ECF system. Counsel listed below are registered ECF users; therefore, service is complete upon Notice of Electronic Case Filing generated in connection with the electronic filing of this pleading. *See Fed. R. Civ. P. 5(b)(2)(D) and ECF Procedural Order ¶¶ 3(c), 7(a) and (b).*

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Counsel for the Government

BY:


JOHN W. MORRIS

Date: January 13, 2014